

## **Delaware Division of Public Health DECLARATION OF SHORTAGE**

NOW COMES, the Division of Public Health, by and through Jaime "Gus" Rivera, MD, FAAP Director, pursuant to 16 Del.C. §510(b), who has determined that a shortage of mercury-free Tetanus/ Diphtheria (Td) vaccine exists for children under 8 years or pregnant women, and who sets forth this Declaration, and herein states as follows:

### **RECITALS**

WHEREAS, pursuant to 16 Del.C. §122(1) the Department of Health and Social Services has "supervision of all matters relating to the preservation of the life and health of the people of the State;" and

WHEREAS, 16 Del.C. §510 (a) restricts the administration of vaccines containing mercury to children under 8 years or pregnant women; and

WHEREAS, 16 Del.C. §510 (b) (3) states that the prohibition against the use of vaccines containing mercury shall not apply when "the Director of the Division of Public Health or their designee determines that a shortage of the vaccine exists which could threaten the health of groups of individuals within the State including children under eight (8) years of age or pregnant women, and additional mercury-free vaccine cannot be made available from other medical providers, manufacturers, distributors, agencies, jurisdictions or by any other means."

WHEREFORE, the Director of the Division of Public Health determines that:

- (1) There exists a shortage of supply of mercury-free Tetanus/ Diphtheria (Td) vaccine that could threaten the health of children under the age of 8 and pregnant women in the State of Delaware;
- (2) Additional mercury-free Tetanus/ Diphtheria (Td) vaccine cannot be made available from other medical providers, manufacturers, distributors, agencies, jurisdictions, or by any other means; and
- (3) The use of mercury containing Tetanus/ Diphtheria (Td) vaccine is necessary to ensure these groups have access to vaccinations.

IN SUPPORT of this determination, the Director finds as follows;

- 1) The Tetanus/ Diphtheria (Td) vaccine is administered to children 7 years of age and older for active immunization against tetanus and diphtheria.
- 2) Sanofi-Pasteur and Akorn are the sole manufacturers of the Tetanus/ Diphtheria (Td) vaccine licensed for use in the USA and no formulation of the vaccine currently manufactured is mercury-free.

Pursuant to 16 Del. C. §510, a provider administering a mercury containing vaccine pursuant to this determination of shortage shall inform the client, parent or legal guardian of the client that the vaccine contains mercury, that they believe the vaccine to be medically necessary, and that the Director of Public Health has made a formal determination that the vaccine may be administered due to the existence of the shortage of mercury-free vaccines.

This determination of shortage is applicable for 12 months from the date of signature, and may be re-issued or amended upon further determination by the Director. This determination will be rescinded prior to 12 months from the date of signature if the Director determines that an FDA-approved mercury-free vaccine is, or can be made, adequately available.

  
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Jaime "Gus" Rivera, MD, FAAP  
Director, Delaware Division of Public Health  
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Date